

Application No.: 09/875,543  
Filing Date: 06/06/2001  
Attorney Docket No. 100308

Applicant(s): AVIANI, et al.  
Examiner: ALINA A. BOUTAH  
Group Art Unit: 2443

### **Remarks**

This communication is responsive to the Non-Final Office Action of **January 26, 2009**. Reexamination and reconsideration of the claims is respectfully requested.

#### **Status of Claims:**

Claims 1-20, 45-48 are pending for examination.

Claims 21-44, and 49-50 were previously canceled.

Claims 1 and 11 are in independent format.

### **Summary of The Office Action**

**Claims 1-20 and 45-48** were rejected under 35 USC §102(b) as being purportedly anticipated by Brendel et al. (US Patent Number 5,774,660), hereinafter Brendel.

**The Claims Patentably Distinguish Over the References of Record**

**35 U.S.C. §102**

Claims 1-20 and 45-48 were rejected under 35 USC 102(b) as being purportedly anticipated by Brendel.

For a 35 U.S.C. §102 reference to anticipate a claim, the reference must teach each and every element of the claim. Section 2131 of the MPEP recites:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Here, the reference does not anticipate the claims because Brendel fails to set forth “a data transfer approval authorizing the data access device to establish the communication connection to the client” as claimed and described.

**Prior Office Actions specifically admit that Brendel does not include this element.** For example, the Office Action dated 1/24/06 says on page 3, paragraph 2, “Brendel did not expressly teach a step of providing a data transfer approval... authorizing the data access device establish the communication connection to the client.” Additionally, the Office Action introducing the Brendel reference, dated 6/23/05, says on page 3, paragraph 8, “Brendel did not expressly teach a step of providing a data transfer approval... authorizing the data access device establish the communication connection to the client.” This may be because Brendel does not teach “a data transfer approval authorizing the data access device to establish the communication connection to the client.”

The present Office Action asserts that the data transfer approval is taught by Brendel at figure 8, element 120. However, element 120 in figure 8 is more closely related to the claimed action “providing a second request to access data to a data access device in response to receiving the first request.” The data transfer approval signal is not taught by Brendel in part because Brendel also does not teach “receiving a first response from the data access device.” The Office Action asserts that Brendel teaches “receiving a first response from the data access device in the data communications device in response to the second request” at figure 6 and figure 11A elements 102 and 120. Figure 6 cannot teach receiving a first response because there is no line originating at a server and arriving at the load balancer. Element 102 of figure 11A illustrates a client providing a request to the load balancer and therefore cannot possibly indicate receiving a response in the data communications device from the data access device. Element 120, while actually between the load balancer and the server, is also not related to receiving a first response from the data access device as described. Element 120 illustrates TCP connection setup involving SYN and ACK signals. These are transport layer signals that are used to ensure that devices at opposite ends of a connection are ready and able to handle actual data transmissions (e.g., application layer signals). A person having ordinary skill in the art would not equate transport layer connection establishment signals to inter-application requests.

The fact that the SYN and ACK signals are not applicable is further illustrated by figure 11b. Element 126 shows how Brendel handles communications between the load-balancer and the server in response to signals from a client after the first. Here, neither SYN nor ACK packets are exchanged between the load-balancer and the server. If SYN and ACK packets were equivalent to the data transfer request and approval, which they are not, Brendel would be implying that only the first data request would require approval and all

future requests would have blanket approval. The claimed limitation is not connection establishment. Rather the claimed limitation is an approval made by the communications device and sent to the data access device for the data access device to independently connect to the client for the transmission of the requested data.

Therefore, claims 1-20 and 45-48 are not anticipated by Brendel. For at least the above reasons these claims are in condition for allowance and applicant respectfully requests the allowance of all claims.

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**Conclusion**

For the reasons set forth above, the claims are now in condition for allowance. An early allowance of the claims is earnestly solicited.

Respectfully submitted,

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